

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:DEM:WAS:TL-N-1817-00
KEChandler

date:

to: Allan Skewers, Team Coordinator, Group 1105

from: Associate District Counsel,
Delaware-Maryland District, Washington, D.C.

subject: [REDACTED] - Preparation of Form 872

This is in response to your March 20, 2000 request for advice regarding preparation of a valid Form 872 for [REDACTED] consolidated group for the tax year ended [REDACTED]. Additional information regarding that request was provided on March 28, 2000. The Form 872 you forwarded for review includes language to extend the applicable statute of limitations relating to liabilities attributable to partnerships/partnership items. The statute of limitations for the consolidated group will expire in [REDACTED] absent an extension. The statute of limitations for certain of the partnerships in which the taxpayer held partnership interests during [REDACTED], however, will expire in [REDACTED].

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUES

Who is the proper party to execute the Form 872 extension of the statute of limitations?

FACTS

During [REDACTED] the year under examination, [REDACTED] (EIN [REDACTED]) was the common parent of a group whose affiliates joined in filing a consolidated federal income tax return. Absent an extension, the statute of limitations for that return will expire on [REDACTED].

As of [REDACTED], [REDACTED] (EIN [REDACTED]) (hereinafter "[REDACTED]") was formed. Simultaneously, through a Section 351 transfer, the stockholders of [REDACTED] exchanged their stock on a share for share basis for the stock of [REDACTED]. [REDACTED] became a wholly owned subsidiary of [REDACTED]. The reason for the formation of [REDACTED] and the 351 transfer was to allow greater flexibility in corporate matters, including obtaining financing, than could be obtained by [REDACTED], a regulated [REDACTED] company.

A Form 872 (copy attached) was prepared by the Service and executed by an authorized officer of [REDACTED], the new parent corporation which purports to extend the statute of limitations of [REDACTED] for the tax year ended [REDACTED]. This Form 872 reflects the EIN of [REDACTED] rather than the EIN number of [REDACTED], the EIN on the consolidated return currently under examination. This Form 872 was signed on behalf of the Service on [REDACTED]. The Form 872 was obtained without following section 6501(c)(4)(B), i.e. without providing a Letter 907 and/or a copy of Publication 1035.

The Form 872 obtained from [REDACTED] includes language addressing the statutes for partnership items, affected items, computational adjustments and items converted to non-partnership items. This language was previously the subject of Chief Counsel Informal Field Advice (copy attached). As noted above, the statutes of limitations on a number of partnerships encompassed within this language will expire on [REDACTED]. Consequently, a valid Form 872 must be fully executed before that date.

DISCUSSION

Section 1501 of the Code grants affiliated groups of corporations the privilege of filing returns on a consolidated basis. If consolidated returns are filed, the members of the group consent to be bound by the legislative regulations promulgated pursuant to the authority in section 1502. See I.R.C. § 1501. Under those regulations, the common parent of the consolidated group is the sole agent for the members of the group with respect to the consolidated tax liability of the group.

Treas. Reg. § 1.1502-77(a) provides that the common parent "shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year." The common parent, i.e. [REDACTED], remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. See Treas. Reg. § 1.1502-77(a). See also, Craigie, Inc. v. Commissioner, 84 T.C. 466, 472 (1985); Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401 (1985).

[REDACTED] as the common parent prior to the [REDACTED] restructuring, is the sole agent of the consolidated group for the year currently under examination. Treas. Reg. § 1.1502-77(a). As the common parent for the consolidated return year under examination, [REDACTED] remains the common parent agent for purposes of extending the statute of limitations with respect to that year even though it is no longer the common parent of the group. Treas. Reg. § 1.1502-77(c); Lone Star Life Ins. Co. v. Commissioner, T.C. Memo. 1997-465. Consequently, a Form 872 (Consent to Extend the Time to Assess Tax) for the tax year ended [REDACTED] should be executed by an authorized officer of [REDACTED] to extend the statute of limitations and should reflect [REDACTED]'s EIN.

The Form 872 obtained to date and executed by an officer of [REDACTED] is invalid. A new Form 872 should be obtained, signed by a current officer of [REDACTED]. The new Form 872 should include only the EIN of [REDACTED]. In completing the "Name" line of the 872 the following should be inserted:

[REDACTED] (EIN [REDACTED]) *

The following should be inserted in the space at the bottom of the first page of the new Form 872:

- * This is with respect to the consolidated tax liability of [REDACTED] (EIN [REDACTED]) for the tax year ended [REDACTED].

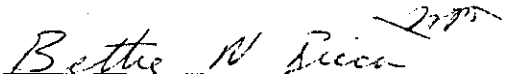
In obtaining the new Form 872, a Letter 907 and copy of Publication 1035 should be provided to the taxpayer to comply with section 6501(c)(4)(B).

Counsel understands that the need to comply with section 6501(c)(4)(B) and to obtain a revised Form 872 have been discussed with the taxpayer, who is amenable to the recommendations reflected in this advice.

CONCLUSIONS

1. As set forth above, [REDACTED] is the proper party to execute the Form 872 to extend the statute of limitations for the tax year ended December 31, [REDACTED].
2. To comply with Section 6501(c)(4)(B), a Letter 907 and a copy of Publication 1035 should be provided to the taxpayer when the new Form 875 is solicited.

This advisory has been reviewed by the National Office and their views incorporated herein. If you have any question regarding this memorandum or want to discuss this issue further, please contact Karen E. Chandler directly at (202) 634-5403, ext. 224.


BETTIE N. RICCA
Associate District Counsel

Attachments: As stated.